Supreme Court, U.S.
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No. 94-620

In The

Supreme Court for the United States

October Term, 1994

BRUCE BUCHBINDER AND ELAINE BUCHBINDER,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition For Writ Of Certiorari
To United States Court Of Appeals
For The Ninth Circuit

SUPPLEMENTAL BRIEF

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QUESTIONS PRESENTED

1. Should the Court grant certiorari in a case where statements of fact and law go uncontested pursuant to waiver by Respondent, wherein Respondent had an obligation to respond (Rule 15.5) and by not responding rendered rebuttal moot, pre-empting any further litigation?

2. Should the Court grant certiorari in a case where statements and allegations go unrefuted, and Respondent by remaining silent, thereby admits to the same?

3. Should the Court grant certiorari when the waiver filed by Respondent pursuant to Rule 15.1 and 15.5 effectively creates an Estoppel In Pais, thereby preventing Respondent from any further action?

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PRELIMINARY STATEMENT

Petitioners, Bruce Buchbinder and Elaine Buchbinder, come before this Court stating there exists an intervening circumstance of a controlling effect, not previously presented to this Court. The intervening circumstance is set forth within the body of the Brief herein.

STATEMENT OF THE CASE

On October 5, 1994, Petitioners Bruce Buchbinder and Elaine Buchbinder, filed a Petition for Writ of Certiorari, to the United States Court of Appeals for the Ninth Circuit, seeking the issuance of a supervisory opinion in review of the actions of the United States Tax Court and the United States Court of Appeals for the Ninth Circuit. The relief sought resulted from the subsequent dismissal of the Buchbinders' case by the Ninth Circuit which effectively and subsequently denied Petitioners' constitutionally protected right to procedural and substantive due process, right to petition for Redress of Grievances, and right to meaningful access to the courts.

Petitioners presented a case against Respondent, complaining that the Ninth Circuit court imposed monetary sanctions for an allegation of misconduct that never actually took place coupled with a second subsequent sanction of dismissal. Petitioners stated in the Petition for Writ of Certiorari filed October 5, 1994, pages 7 and 8, that the issues in the first case (alleged misconduct) were confused by the Commissioner and that the Ninth Circuit adopted the Commissioner's confusion, sanctioning the Buchbinders for a frivolous argument that the Buchbinders never actually made. The first case (alleged misconduct) led to the present case (dismissal for nonpayment of sanctions), which is herewith on appeal. The instant case was dismissed on the contention that the Buchbinders had failed to pay the sanction imposed by the Ninth Circuit in the Buchbinders' first appeal. The Petitioners further contended on page 11 that they were extremely punished by the Ninth Circuit Court of Appeals for something that they never actually did and

that the punishment was so extreme that they have been substantially denied access to the meaningful judicial review of their case.

Petitioners therefore alleging they were left without remedy in the denial of their due process rights pursuant to Title 5 U.S.C. §§ 554, 702, 703, and 706, as guaranteed by Amendment V of the United States Constitution; in the denial of their right to petition for Redress of Grievances as guaranteed by Amendment I, and in the denial of their right to meaningful access to the courts as guaranteed by Amendment IX.

On October 19, 1994, during pendency of Petitioners' Petition for a Writ of Certiorari to this Court, the Solicitor General, Drew S. Days, III, who makes appearance and is counsel for Respondent, admitted to practice before this Court, appeared by brief and filed an express written waiver of right to file in opposition to Petitioners' asserted facts and conclusions. Respondent, in filing waiver pursuant to Supreme Court Rule 15.5, admitted and confirmed the validity and accuracy of Petitioners' statements and accusations. A copy of the waiver appears in Appendix A.

RESPONSE TO WAIVER

In their Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, Petitioners raised the question of what standard must be met by the United States Tax Court in order to fulfill Petitioners' right to the scope of review mandated by Congress pursuant to Title 5 U.S.C. Section 706, and further whether

the arbitrary dismissal of a litigant's cause of action before the courts, especially an action brought by a Pro Se litigant is the harshest sanction that can be imposed by the courts, and whether such a sanction can rise to the level of denial of proper due process, denial of right to petition for a Redress of Grievances and denial of right to meaningful access to the courts. These questions remain unanswered in respect to the Petitioners. Subsequently, after failing to respond to allegations of the Petitioners that were before the Court, alleging that Petitioners were deprived of their due process rights, deprived of their right to Redress of Grievances, and right to meaningful access to the courts, Respondent defaulted pursuant waiver and is estopped from any further action in this cause.

The Government, pursuant to Supreme Court Rule 15.1, was obligated as Respondent to address any perceived misstatements of fact or law before the Court. The Government expressly waived its right to respond pursuant to Supreme Court Rule 15.5. Such a waiver, in the face of Petitioners' allegations, serves to leave the Petitioners' allegations uncontested before the Court and leaves the Respondent unable to later act in contravention of those allegations.

The Government offered no defense against the accusations made by Petitioners and did not point out any perceived misstatements having an obligation to do so pursuant to Supreme Court Rule 15.1. The Government specifically chose to waive that right pursuant to 15.5. Such a response in any other court is a plea of no contest entered willingly and without coercion.

Petitioners' statements and accusations unrebutted stand as truth, therefore rendering Respondent's rebuttal before the Court moot. Under the common law rule of reasonable argument, Petitioners therefore claim a default-judgment against Respondent and invoke an Estoppel In Pais. *U.S. v. Schneiderman,* 102 Fed. Supp. 87 (1951) and *States S.S. Company v. Permanente S.S. Corp.,* 231 F.2d. 82 (1956).

CONCLUSION

Since Respondent has defaulted pursuant waiver, accepting Petitioners' version of the law and facts to be true, there are no grounds for further action in this case. The allegations are now decided in favor of Petitioners, through default, as Respondent did not defend his position, pursuant waiver. Respondent is enjoined from further action based on his default on these issues and Respondent's attempts to further this action are blocked by Estoppel In Pais.

However, Respondent's default and the estoppel created thereby does not resolve the issue of who has what burden in Tax Court, and what the scope and standard of review a petitioner in Tax Court has a right to expect, nor does it resolve the issue of abuses to litigants in the lower courts through judicial usurpation of powers.

Therefore, the Court should consider granting certiorari in this case.

Respectfully submitted,

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DATED: October 31, 1994

APPENDIX A

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

BUCHBINDER, BRUCE, ET UX., Petitioner	)	
vs.	)	No. 94-0620
CIR	)	

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the court.

DREW S. DAYS, III
SOLICITOR GENERAL

October 19, 1994

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